



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA-R07-RCRA-2014-0452; FRL-9915-45-Region 7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA, also, "the Agency" or "we") is proposing to grant a petition submitted by the John Deere Des Moines Works (John Deere) of Deere & Company, in Ankeny, Iowa to exclude or "delist" up to 600 tons per calendar year of F006/F019 wastewater treatment sludge filter cake generated by John Deere's wastewater treatment system from the list of hazardous wastes.

The Agency has tentatively decided to grant the petition based on an evaluation of waste-specific information provided by John Deere. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

This exclusion would be valid only when the wastewater treatment sludge filter cake is disposed of in a Subtitle D

landfill which is permitted, licensed, or otherwise authorized by a State to manage industrial solid waste.

If finalized, EPA would conclude that John Deere's petitioned waste is nonhazardous with respect to the original listing criteria and that there are no other current factors which would cause the waste to be hazardous.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER FEDERAL REGISTER DATE OF PUBLICATION DATE]. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Any person may request a hearing on the proposed decision by filing a request to EPA by [INSERT DATE 15 DAYS AFTER FEDERAL REGISTER DATE OF PUBLICATION DATE]. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R07-RCRA-2014-0452 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. Email: herstowski.ken@epa.gov.
3. Fax: (913)551-7631, to the attention of Ken Herstowski.

4. Mail: Ken Herstowski, Air and Waste Management Division, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219.

5. Hand Delivery: Ken Herstowski, Air and Waste Management Division, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa, KS 66219. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please contact Ken Herstowski at (913) 551-7631.

Instructions: Direct your comments to Docket ID No. EPA-R07-RCRA-2014-0452. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going

through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Region 7 offices at 11201 Renner Boulevard, Lenexa KS 66219 by appointment only during normal hours of operation. Appointments must be made in

advance to view hard copy docket materials by contacting Ken Herstowski at (913) 551-7631 or by email at herstowski.ken@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ken Herstowski, Air and Waste Management Division, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219; telephone number: (913)551-7631; fax number (913)551-7631; e-mail address: herstowski.ken@epa.gov.

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I. Overview Information

Title 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268 and 273. Section 260.22(a) specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

The Agency bases its proposed decision to grant a petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, we would conclude the petitioned waste from this facility is non-hazardous with respect to the original listing criteria and that the waste process used will substantially reduce the likelihood of migration of hazardous constituents from this waste. We would also conclude that the

processes minimize short-term and long-term threats from the petitioned waste to human health and the environment. The EPA is proposing to grant a petition submitted by John Deere Des Moines Works of Deere and Company (John Deere) located in Ankeny, Iowa, to exclude or delist an annual volume of 600 tons per year of F006/F019 wastewater treatment sludge filter cake from the lists of hazardous waste set forth in title 40 CFR 261.31, Hazardous wastes from non-specific sources. John Deere claims that the petitioned waste does not meet the criteria for which EPA listed it, and that there are no additional constituents or factors which could cause the waste to be hazardous.

Based on the EPA's evaluation described in section III, in which we reviewed the description of the process which generates the waste and the analytical data submitted by John Deere, we agree with the petitioner that the waste is nonhazardous. We believe that the petitioned waste does not meet the criteria for which the waste was listed, and that there are no other factors which might cause the waste to be hazardous.

A. What Action is EPA Proposing?

EPA is proposing: (1) To grant John Deere's delisting petition to have its WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and subject to certain

verification and monitoring conditions. (2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why is EPA Proposing to Approve This Delisting?

John Deere's petition requests an exclusion from the F006 waste listing pursuant to 40 CFR 260.20 and 260.22. John Deere does not believe that the petitioned waste meets the criteria for which EPA listed it. John Deere also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing

criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from John Deere is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the John Deere, Ankeny, IA facility.

C. How Will John Deere Manage the Waste, if it is Delisted?

If the sludge is delisted, the WWTP sludge from John Deere will be disposed at a RCRA Subtitle D landfill permitted by the Iowa Department of Natural Resources.

D. When Would the Proposed Delisting Exclusion be Finalized?

RCRA section 3001(f) specifically requires EPA to provide a notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 U.S.C.A. 6930(b)(1), allows rules to become effective in less than six months when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good

cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

II. Background

A. What is a Listed Waste?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of Resource Conservation and Recovery Act (RCRA). The EPA has amended this list several times and publishes it in 40 CFR 261.31 and 261.32.

We list these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (3).

B. What is a Delisting Petition?

Individual waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a waste described in the regulations generally is hazardous, a

specific waste from an individual facility meeting the listing description may not be.

The procedure to exclude or delist a waste in 40 CFR 260.20 and 260.22 allows a person, or a facility, to submit a petition to the EPA or to an authorized state demonstrating that a specific waste from a particular generating facility is not hazardous.

In a delisting petition, the petitioner must show that a waste does not meet any of the criteria for listed wastes in 40 CFR 261.11 and that the waste does not exhibit any of the hazardous waste characteristics of ignitability, reactivity, corrosivity, or toxicity. The petitioner must present sufficient information for the Agency to decide whether any factors in addition to those for which the waste was listed warrant retaining it as a hazardous waste. (See § 260.22, 42 U.S.C. 6921(f) and the background documents for the listed wastes.)

If a delisting petition is granted, the generator remains obligated under RCRA to confirm that the waste remains nonhazardous.

C. What Factors Must EPA Consider in Deciding Whether to Grant a Delisting Petition?

In reviewing this petition, we considered the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)-(4). We evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (3).

Besides considering the criteria in 40 CFR 260.22(a), 261.11(a)(2) and (3), 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents), other than those for which we listed the waste, if these additional factors could cause the waste to be hazardous.

Our tentative decision to delist waste from John Deere's facility is based on our evaluation of the waste for factors or criteria which could cause the waste to be hazardous. These factors included: (1) whether the waste is considered acutely toxic; (2) the toxicity of the constituents; (3) the concentration of the constituents in the waste; (4) the tendency of the constituents to migrate and to bioaccumulate; (5) the persistence in the environment of any constituents once released

from the waste; (6) plausible and specific types of management of the petitioned waste; (7) the quantity of waste produced; and (8) waste variability.

EPA must also consider as hazardous wastes, mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See 40 CFR 261.3(a)(2)(iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. Mixture and derived-from wastes are also eligible for exclusion but remain hazardous until excluded.

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did John Deere Petition EPA to Delist?

On January 28, 2014, John Deere (through its consultant) petitioned EPA to exclude from the list of hazardous wastes contained in 40 CFR 261.31, F006/F019 Waste Water Treatment Sludge Filter Cake (Filter Cake) from dewatering sludge generated by the plant wastewater treatment facility from the John Deere facility located in Ankeny, Iowa. The filter cake is subject to two waste listings as it is the result of treating a mixture of wastewater from different manufacturing processes. F006 is defined in § 261.31 as "Wastewater treatment sludges

from electroplating operations . . ." F019 is defined in § 261.31 as "Wastewater treatment sludges from the chemical conversion coating of aluminum . . ." John Deere claims that the petitioned waste does not meet the criteria for which F006 was listed (i.e., cadmium, hexavalent chromium, nickel, cyanide (complexed)) or for which F019 was listed (i.e., hexavalent chromium, cyanide (complexed)) and that there are no other factors which would cause the waste to be hazardous. Specifically, the petition request is for a standard exclusion for 600 tons per calendar year of Filter Cake.

B. How Does John Deere Generate the Waste?

The Filter Cake John Deere generates is from the plant wastewater treatment facility. Wastewater is generated from a variety of manufacturing activities at the facility. Approximately 106,000 gallons per day of [total] wastewater is conveyed to the wastewater treatment facility. The wastewater is a combination of wastewater from washing/cleaning, plating and coating metal parts manufactured and/or used in the assembly of agricultural equipment at the facility. Those processes that account for highest wastewater generation include: chrome electroplating (15,000 gallons per day or 15,000 gpd) the source

of the wastewater for the F006 listing, E-Coat system (54,000 gpd) the source of the F019 listing, heat treat (10,000 gpd), and Department 20C Wash Line (16,000 gpd). The wastewater from chrome electroplating is pre-treated to reduce hexavalent chromium to trivalent chromium before it is transferred to John Deere's wastewater treatment facility generating the Filter Cake. All wastewater generated onsite is transferred to the wastewater treatment facility where it is treated to remove dirt, oil, grease, metals and other constituents before it is discharged under a "Water Contribution Permit" (Permit Number A10138 issued by the [City of Des Moines] Waste Water Regulation Authority) via sewers to a publicly owned treatment works operated by the City of Des Moines.

C. How Did John Deere Sample and Analyze the Petitioned Waste?

To support its petition, John Deere submitted: (1) Facility information on production processes and waste generation processes; (2) initial Filter Cake composite sample analytical results to determine constituents of concern (COC); and (3) Analytical results from six composite samples of Filter Cake for the COC. The initial sample was analyzed for EPA's list of hazardous constituents in 40 CFR part 261, appendix VIII,

pesticides, PCBs. The COC selected from the initial composite sample results are barium, chromium, hexavalent chromium, copper, lead, mercury, nickel, vanadium, zinc, cyanide, acetone and methyl ethyl ketone. Both total and leachable concentrations of the COC in the Filter Cake were determined.

John Deere generated the sampling data used in the Delisting Risk Assessment Software (DRAS) under a Sampling Plan and Quality Assurance Project Plan (June 2012 Revision). EPA believes that the sampling procedures used by John Deere satisfy EPA's criteria for collecting representative samples of the F006/F019 waste.

D. What Were the Results of John Deere's Analysis of the Waste?

EPA believes that John Deere's analytical characterization provides a reasonable basis to grant John Deere's petition for an exclusion of the [wastewater treatment sludge] Filter Cake. Furthermore, EPA believes the data submitted in support of the petition show that the sludge is non-hazardous. Analytical data for the wastewater treatment sludge samples were used in the DRAS to develop delisting levels.

The data for the total concentration of COC in the Filter Cake are as follows: milligrams per kilogram (mg/kg) Barium - 643; Copper - 959; Chromium - 15,000; Hexavalent Chromium - 13.6; Cyanide - 1.92; Lead - 291; Mercury - 0.635; Nickel - 1,010; Vanadium - 253; Zinc - 3,390; Acetone - 9.13; and Methyl Ethyl Ketone - 0.191. The data for the leachate concentration of COC in the Filter Cake are as follows: milligrams per liter (mg/l) Barium - .0272; Copper - 0.442; Chromium - 0.826; Cyanide - <0.01; Lead - <0.05; Mercury - 0.000702; Nickel - 0.744; Vanadium - 0.0164; Zinc - 0.403; Acetone - 0.001; and Methyl Ethyl Ketone - 0.001. Note that the above levels represent the highest COC concentration result reported. If the result was reported as "non-detect" (shown above by a "<") the detection limit was used in the analysis. Hexavalent chromium was analyzed with DRAS at milligrams per liter (mg/l) 0.0826 (one tenth of the chromium leachate value).

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, we assumed that the waste would be disposed in a Subtitle D landfill and we considered transport of waste constituents through groundwater, surface water and air. We evaluated John Deere's petitioned waste using

the Agency's Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000), 65 FR 75637 (December 4, 2000), and 73 FR 28768 (May 19, 2008) to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of John Deere's petitioned waste on human health and the environment. To predict the potential for release to groundwater from landfilled wastes and subsequent routes of exposure to a receptor, the DRAS uses dilution attenuation factors derived from EPA's Composite Model for Leachate Migration and Transformation Products (EPACMTP). From a release to groundwater, the DRAS considers routes of exposure to a human receptor of ingestion of contaminated groundwater, inhalation from groundwater while showering and dermal contact from groundwater while bathing.

From a release to surface water by erosion of waste from an open landfill into stormwater run-off, DRAS evaluates the exposure to a human receptor by fish ingestion and ingestion of drinking water. From a release of waste particles and volatile emissions to air from the surface of an open landfill, DRAS considers routes of exposure of inhalation of volatile constituents, inhalation of particles, and air deposition of

particles on residential soil and subsequent ingestion of the contaminated soil by a child. The technical support document and the user's guide to DRAS are included in the docket.

At a benchmark cancer risk of one in one hundred thousand (1×10^{-5}) and a benchmark hazard quotient of 1.0, the DRAS program determined maximum allowable concentrations for each constituent in both the waste and the leachate at an annual waste volume of 1000 cubic yards disposed in a landfill for 20 years after which time the landfill is closed. We used the maximum reported total and TCLP leachate concentrations as inputs to estimate the constituent concentrations in the groundwater, soil, surface water and air.

F. What Did EPA Conclude About John Deere's Waste?

The maximum reported concentrations of the hazardous constituents found in this waste are presented above in section D. The maximum allowable total COC concentrations in the Filter Cake as determined by the DRAS are as follows: milligrams per kilogram (mg/kg) Barium - 2.85×10^7 ; Copper - 5.34×10^6 ; Chromium (III) - 4.56×10^{10} ; Hexavalent Chromium - 1.36×10^4 ; Cyanide - 2.99×10^6 ; Lead - 1.09×10^7 ; Mercury - 1.86×10^1 ; Nickel - 4.76×10^6 ; Vanadium - 1.52×10^8 ; Zinc - 1.38×10^7 ; Acetone - 3.63×10^8 ; and Methyl Ethyl Ketone - 1.45×10^9 . The

maximum allowable leachate COC concentrations in the Filter Cake as determined by the DRAS are as follows: milligrams per liter (mg/l) Copper - 1.78×10^2 ; Hexavalent Chromium - 1.38×10^1 ; Cyanide - 2.27×10^1 ; Lead - 4.18; Nickel - 9.78×10^1 ; Vanadium - 2.47×10^1 ; Zinc - 1.48×10^3 ; Acetone - 3.84×10^3 ; and. The maximum allowable leachate COC concentrations in the Filter Cake as determined by TCLP are as follows: milligrams per liter (mg/l) Barium - 100; Chromium (total) - 5; Mercury - 2×10^{-1} ; and Methyl Ethyl Ketone - 200. The concentrations of all constituents in both the waste and the leachate are below the allowable concentrations. We conclude that John Deere's Filter Cake is not a substantial or potential hazard to human health and the environment when disposed of in a Subtitle D landfill.

We propose to grant an exclusion for the Filter Cake. If this exclusion is finalized, John Deere must dispose of the Filter Cake in a Subtitle D landfill permitted, licensed or otherwise authorized by a state RCRA solid waste permit program, and will remain obligated to verify that the waste meets the allowable concentrations set forth here. John Deere must also continue to determine whether the Filter Cake is identified in subpart C of 40 CFR part 261.

IV. Conditions for Exclusion

A. *When Would EPA Finalize the Proposed Delisting Exclusion?*

HSWA specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not make a final decision or grant an exclusion until it has addressed all timely public comments on today's proposal, including any at public hearings.

Since this rule would reduce the existing requirements for persons generating hazardous wastes, the regulated community does not need a six-month period to come into compliance in accordance with section 3010 of RCRA as amended by HSWA therefore a final rule granting John Deere's petition is proposed to be effective immediately upon publication in the Federal Register. Similarly, since John Deere is already required to comply with RCRA Subtitle C for the management of the petitioned waste, a final rule denying the petition would be effective immediately upon publication in the Federal Register as the petitioned waste would remain *status quo* - a hazardous waste.

B. How Will John Deere Manage the Waste if it is Delisted?

If the petitioned waste is delisted, John Deere must dispose of it in a subtitle D landfill which is permitted, licensed, or otherwise authorized by a state to manage industrial waste.

C. With What Conditions Must the Petitioner Comply?

The petitioner, John Deere, must comply with the conditions which will be in 40 CFR part 261, appendix IX, table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels: This paragraph provides the levels of constituents for which John Deere must test the WWTP sludge, below which these wastes would be considered non-hazardous. EPA selected the set of constituents and levels specified in paragraph (1) of 40 CFR part 261, appendix IX, table 1, (the exclusion language) based on information in the petition, information from DRAS and variability of the WWTP sludge composition. The proposed levels EPA compiled the constituents list from the composition of the waste, descriptions of John Deere's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making.

(2) Waste Holding and Handling: The purpose of this paragraph is to ensure that John Deere manages and disposes of any Filter Cake that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the Filter Cake as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. Unless and until EPA concurs that the initial verification data collected under paragraph (3) supports the data provided in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the Federal Register but the disposal as non-hazardous waste cannot begin until two quarters of verification sampling is completed and an approval is obtained from EPA.

(3) Verification Testing Requirements: John Deere must implement a verification testing program on the Filter Cake to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. The first part of the verification testing program is the quarterly testing of representative samples of the Filter Cake during the first year of waste generation (two quarters prior to obtaining written EPA approval and two additional quarters). The proposed testing would verify that John Deere operates a treatment

facility where the constituent concentrations of the Filter Cake do not exhibit unacceptable temporal and spatial levels of toxic constituents. John Deere would begin quarterly sampling 30 days after the final exclusion as described in paragraph (3) (A) of the exclusion language. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the Filter Cake over time.

Following two consecutive quarters of sampling where the levels of constituents do not exceed the levels in paragraph (1), John Deere can then manage and dispose of the Filter Cake as non-hazardous in accordance with all applicable solid waste regulations following EPA approval. If EPA determines that the data collected under this paragraph does not support the data provided in the petition, the exclusion will not cover the generated Filter Cake. John Deere must then prove through a new demonstration that its Filter Cake meets the conditions of the exclusion.

The second part of the verification testing program is the annual testing of representative samples of the Filter Cake, per paragraph (3) (B) of the exclusion language. To confirm that the characteristics of the waste do not change significantly over time, John Deere must continue to analyze a representative

sample of the Filter Cake on an annual basis. Annual testing requires analyzing the full list of constituents in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language, John Deere must reinstate all testing in paragraph (1) of the exclusion language. John Deere must then prove through a new demonstration that its Filter Cake meets the conditions of the exclusion. If the annual testing of the Filter Cake does not meet the delisting requirements in paragraph (1), John Deere must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions: Paragraph (4) of the exclusion language would allow John Deere the flexibility of modifying its processes (for example, changes in equipment or operating conditions). However, if significant changes to the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process are made, then John Deere must prove that the modified process(es)/chemicals will not affect the composition or type of Filter Cake generated and must request approval from EPA. EPA

will determine if these changes will result in additional COCs. John Deere must manage Filter Cake generated during the new process demonstration as hazardous waste until it has obtained written approval from EPA and paragraph (3) of the exclusion language is satisfied.

If the proposed exclusion is made final, it will apply only to a maximum of 600 tons per calendar year of Filter Cake generated at John Deere after successful verification testing. EPA would require John Deere to file a new delisting petition if it generates waste volumes greater than 600 tons per calendar year of Filter Cake. John Deere must manage these greater volumes as hazardous waste unless and until EPA grants a new exclusion.

EPA may review and approve changes in writing or alternatively may require John Deere to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the wastewater treatment process;

(b) If it significantly changes from the current manufacturing process(es) described in the John Deere petition;
or

(c) If it makes any changes that could affect the composition or type of waste generated such that the changes would cause any of the constituents in paragraph (1) of the exclusion language to potentially be above the delisting levels or would introduce any new constituents into the waste.

(5) Data Submittals and Recordkeeping: To provide appropriate documentation that John Deere's Filter Cake is meeting the delisting levels, John Deere must submit reports to EPA as specified in the conditions, and must compile, summarize, and keep delisting records on-site for a minimum of five years. It must keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that John Deere furnish the data upon request for inspection by any employee or representative of EPA or the State of Iowa.

(6) Reopener: The purpose of paragraph (6) of the exclusion language is to require John Deere to disclose new or different information related to a condition at the facility or disposal of the Filter Cake, if it is pertinent to the delisting. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see

if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires John Deere to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

It is EPA's position that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting. EPA believes a clear statement of its authority in delisting is merited in light of EPA's experience. See the **Federal Register** notices regarding Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations into the environment than the concentrations predicted when conducting the TCLP, leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents

itself, EPA will continue to address these situations on a case-by-case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA section 553(b).

(7) Notification Requirements: In order to adequately track wastes that have been delisted, EPA is requiring that John Deere provide a one-time written notification to any state regulatory agency through which or to which the delisted waste is being transported. John Deere must provide this notification 60 days before commencing this activity. In addition to providing this notification, John Deere is advised to verify with each state the status of EPA's delisting decision under state law (see the discussion in Section V. for specifics).

D. What Happens if John Deere Violates the Terms and Conditions of the Exclusion?

If John Deere violates the terms and conditions established in the exclusion, the Filter Cake would not be exempt from subtitle C since this is a conditional exclusion, and thus the Filter Cake would be subject to hazardous waste management requirements. EPA also could then initiate procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for

enforcement activities on a case-by-case basis. EPA expects John Deere to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. How Would this Action Affect the States?

EPA is issuing this exclusion under the Federal RCRA delisting program. Thus, upon the exclusion being finalized, the wastes covered will be removed from subtitle C control under the Federal RCRA program. This will mean, first, that the wastes will be delisted in any State or territory where the EPA is directly administering the RCRA program (e.g., Iowa, Indian Country). Thus, the delisting would be valid in Iowa on the effective date of a final rule delisting the petitioned waste. However, whether the wastes will be delisted in other States which have been authorized to administer the RCRA program will vary depending upon the authorization status of the States and the particular requirements regarding delisted wastes in the various States.

Some generally authorized States have not received authorization for delisting. Thus, the EPA makes delisting determinations for such States. However, RCRA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent

requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state, or that requires a State concurrence before the Federal exclusion takes effect, or that allows the State to add conditions to any Federal exclusion. The petitioner must contact the state regulatory authority in each State to or through which it may wish to ship its wastes to establish the status of its wastes under the state's laws and regulations affecting transport and disposal of the petitioned waste.

EPA has also authorized some states to administer a delisting program in place of the Federal program, that is, to make state delisting decisions. In such states, the state delisting requirements operate in lieu of the Federal delisting requirements. Therefore, this exclusion does not apply in those authorized states unless the state makes the rule part of its authorized program. If John Deere transports the Federally excluded waste to or manages the waste in any state with delisting authorization, John Deere must obtain a delisting authorization from that state before it can manage the waste as non-hazardous in that state.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore, is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism", (64 FR 43255,

August 10, 1999). Thus, Executive Order 13132 does not apply to this rule.

Similarly, because this rule will affect only a particular facility, this proposed rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used DRAS, which considers health and safety risks to children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does

not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, "Civil Justice Reform", (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3)). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular

applicability. Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The Agency's risk assessment did not identify risks from management of this material in a Subtitle D landfill. Therefore, EPA believes that any populations in proximity of the landfills used by this facility should not be adversely affected by common waste management practices for this delisted waste.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling,
Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 7, 2014.

Karl Brooks,
Regional Administrator,
Region 7.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 261 as follows:

PART 261--IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX to part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261--Wastes Excluded Under §§ 260.20 and 260.22

Table 1--Wastes Excluded From Non-Specific Sources

Facility	Address	Waste description
* * * * *		
John Deere Des Moines Works of Deere & Company	Ankeny, IA	<p>Wastewater Treatment Sludge Filter Cake (WWTS Filter Cake) (Hazardous Waste No. F006/F019) generated from combined onsite wastewater treatment at the Ankeny, IA, facility wastewater treatment plant at a maximum annual rate of 600 tons per calendar year and disposed of in a Subtitle D Landfill which is licensed, permitted, or otherwise authorized by a state to accept the delisted WWTS Filter Cake.</p> <p>John Deere must implement a testing program that meets the following conditions for the exclusion to be valid:</p> <p>1. <i>Delisting Levels:</i> (A) The WWTS Filter Cake shall not exhibit any of the "Characteristics of Hazardous Waste in 40 CFR 261, Subpart C. (B) All TCLP leachable concentrations (40 CFR 261.24(a)) for the following constituents must not exceed the following levels (mg/L for TCLP): Arsenic - 5.0; Barium - 100.0; Cadmium - 1.0; Chromium -</p>

		<p>5.0; Lead - 5.0; Mercury 0.2; and, Nickel - 32.4. (C) EPA SW-846 Method 1313 Extraction at pH 2.88, 7 and 13 concentration of Chromium (hexavalent) must not exceed (mg/l) 0.087. (D) All total concentrations for the following constituents must not exceed the following levels (mg/kg): Antimony - 103; Arsenic - 52; Barium - 965; Beryllium - 21; Cadmium - 10; Chromium (total) - 22,500; Cobalt - 11; Copper - 1439; Lead - 437; Nickel - 1,515; Selenium - 52; Silver - 26; Thallium - 52; Tin - 68; Vanadium - 380; Zinc - 5,085; Mercury - 1; Chromium (hexavalent) - 20; Cyanide - 3, Oil and Grease - 32,250; Acetone - 8; Methyl Ethyl Ketone (MEK) - 0.3.</p> <p>2. <i>Waste Handling and Holding:</i> (A) John Deere must manage as hazardous all WWTS Filter Cake generated until it has completed initial verification testing described in paragraph (3) (A) and valid analyses show that paragraph (1) is satisfied and written approval is received from EPA. (B) Levels of constituents measured in the samples of the WWTS Filter Cake that do not exceed the levels set forth in paragraph (1) for two consecutive quarterly sampling events are non-hazardous. After approval is received from EPA, John Deere can manage and dispose of the non-hazardous WWTS Filter Cake according to all applicable solid waste regulations. (C) Notwithstanding having received the initial approval from EPA, if constituent levels in a later sample exceed any of the Delisting Levels set in paragraph (1), from that point forward, John Deere must treat all the waste covered by this exclusion as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). John Deere must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.</p> <p>3. <i>Verification Testing Requirements:</i> John Deere must perform sample collection and analyses in accordance with the Quality Assurance Project Plan submitted with the "John Deere Des Moines, Iowa, Sampling and Analysis Plan for Delisting of F006 and F019 Filter Cake, June 2012." All samples shall be representative composite samples according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the</p>
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		<p>first annual sample taken. (iii) John Deere shall submit an annual testing report to EPA with its annual test results, within thirty (30) days after taking each annual sample. The annual testing report also shall include the total amount of waste in tons disposed during the calendar year.</p> <p>4. <i>Changes in Operating Conditions:</i> If John Deere significantly changes the manufacturing or treatment process described in the petition, or the chemicals used in the manufacturing or treatment process, it must notify the EPA in writing and may no longer handle the WWTS Filter Cake generated from the new process as non-hazardous unless and until the WWTS Filter Cake is shown to meet the delisting levels set in paragraph(1), John Deere demonstrates that no new hazardous constituents listed in appendix VIII of part 261 have been introduced, and John Deere has received written approval from EPA to manage the wastes from the new process under this exclusion. While the EPA may provide written approval of certain changes, if there are changes that the EPA determines are highly significant, the EPA may instead require John Deere to file a new delisting petition.</p> <p>5. <i>Data Submittals and Recordkeeping:</i> John Deere must submit the information described below. If John Deere fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). John Deere must: (A) Submit the data obtained through paragraph (3) to the Chief, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219, within the time specified. All supporting data can be submitted on CD-ROM or some comparable electronic media; (B) Compile, summarize, and maintain on site for a minimum of five years and make available for inspection records of operating conditions, including monthly and annual volumes of WWTS Filter Cake generated, analytical data, including quality control information and, copies of the notification(s) required in paragraph (7); (C) Submit with all data a signed copy of the certification statement in 40 CFR 260.22(i)(12).</p> <p>6. <i>Reopener:</i> (A) If, any time after disposal of</p>
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		<p>the delisted waste, John Deere possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other relevant data to the delisted waste indicating that any constituent is at a concentration in the leachate higher than the specified delisting concentration, then John Deere must report such data, in writing, to the Chief, Waste Remediation and Permits Branch, US EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219 within 10 days of first possessing or being made aware of that data. (B) Based on the information described in paragraph (A) and any other information received from any source, the Regional Administrator, EPA Region 7, will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify John Deere in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing John Deere with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. John Deere shall have 30 days from the date of the Regional Administrator's notice to present the information. (D) If after 30 days John Deere presents no further information or after a review of any submitted information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.</p> <p><i>7. Notification Requirements:</i> John Deere must do the following before transporting the delisted waste: (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update</p>
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		the one-time written notification if it ships the delisted waste into a different disposal facility. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.
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